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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 951

RALPH SHINABERRY, PETITIONER

v.

UNITED STATES OF AMERICA, ACTING THROUGH THE COUNTY PRODUCTION AND MARKETING ADMINISTRATION COMMITTEE FOR HILLSDALE COUNTY, STATE OF MICHIGAN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit (Pet. App. 9) is not yet reported. The opinion of the District Court (Pet. App. 6–9) is reported at 142 F. Supp. 413.

JURISDICTION

The judgment of the Court of Appeals was entered on March 6, 1957 (Pet. App. 9). The petition for a writ of certiorari was filed on April 29, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

In 1954, petitioner grew wheat on his farm in excess of the production and marketing quota set for him by

his local production and marketing administration committee under the provisions of the Agricultural Adjustment Act of 1938. Under amendments to this Act, petitioner is subject to a penalty proportionate to the amount of such excess production, and the United States has a lien upon his wheat crop for the amount of this penalty, 7 U. S. C., Supp. IV, 1340 (2), (4). Petitioner sued to enjoin the United States from enforcing the penalty or from asserting its lien upon his wheat. He contends that the Agricultural Adjustment Act of 1938 as applied to him violates the Constitution in various respects.

The question presented is whether the United States has consented, by 28 U. S. C. 2410, to a suit to enjoin the enforcement of a penalty and lien assessed on wheat produced in excess of a production and marketing quota, or whether the exclusive procedure for testing the validity of the production and marketing quotas on which the penalty is based is by a proceeding for judicial review of the quota, as provided, in the Agricultural Adjustment Act of 1938, 7 U. S. C. 1367.

STATUTES INVOLVED

28 U. S. C. 2410 (a):

> (a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, including the District Court for the Territory of Alaska, or in any State court having jurisdiction of the subject matter, to quiet title to or for the foreclosure of a mortgage or other lien upon real or per-

sonal property on which the United States has or claims a mortgage or other lien.

* * * * *

7 U. S. C., Supp. IV, 1340 (2), (4):

* * * * *

(2) During any marketing year for which quotas are in effect, the producer shall be subject to a penalty on the farm marketing excess of wheat. The rate of the penalty on wheat shall be 45 per centum of the parity price per bushel of wheat as of May 1 of the calendar year in which the crop is harvested.

* * * * *

(4) Until the producers on any farm store, deliver to the Secretary, or pay the penalty on, the farm marketing excess of any crop of wheat, the entire crop of wheat produced on the farm shall be subject to a lien in favor of the United States for the amount of the penalty.

* * * * *

7 U. S. C. 1367:

The commencement of judicial proceedings under this Part shall not, unless specifically ordered by the court, operate as a stay of the review committee's determination. Notwithstanding any other provision of law, the jurisdiction conferred by this Part to review the legal validity of a determination made by a review committee pursuant to this Part shall be exclusive. No court of the United States or of any State shall have jurisdiction to pass upon the legal validity of any such determination except in a proceeding under this Part.

STATEMENT

This action was instituted by petitioner, Ralph Shinaberry, to restrain the United States, through the County Production and Marketing Administration Committee for Hillsdale County, State of Michigan, from applying to him the production and marketing quota provisions of the Agricultural Adjustment Act of 1938, 7 U. S. C. 1281 *et seq.*, and from collection of penalties, or assertion of a lien therefor, based on wheat production in excess of the quota established for him by the County Committee.

The essential allegations of the complaint are as follows:

Petitioner owns and farms 150 acres situated in Hillsdale County, Michigan. In 1954, he was assigned a production quota of 9 acres of wheat but, in the regular course of his operations, he sowed 28 acres. Thereafter, the County Committee furnished him a notice of 1954 Marketing Quota and Farm Marketing Excess of wheat which advised him that he had an excess of wheat acreage of 19 acres, and that the production from these 19 acres constituted a farm marketing excess of 570 bushels which were subject to a total penalty of $638.40, at $1.12 per bushel. This wheat is stored upon petitioner's farm. The United States is threatening to file a lien against plaintiff's entire wheat crop for the amount of the penalty, and it demands that he deposit with its agents funds equal to the amount of the penalty, or warehouse receipts for the stored wheat, or a bond of indemnity for the amount of the penalty. The United States has denied plaintiff a wheat marketing

card and, as a result of such denial, his right to sell wheat has been impaired.

Petitioner contends that the aforesaid actions are unconstitutional, urging that the Agricultural Adjustment Act cannot be applied to him because he is not engaged in interstate commerce; that his property is being taken without due process of law; that the regulations under which respondent purports to act are legislative in nature and cannot be issued by the executive branch; that his right to transact business is being unlawfully restricted; and that he is being denied equal protection of the laws.

Plaintiff first filed a complaint seeking to enjoin the application to him of the quota and penalty provisions of the Agricultural Adjustment Act of 1938. Thereafter, he filed an amended complaint alleging that the United States was asserting a lien against the wheat stored on his farm and praying that the Agricultural Adjustment Act and the regulations promulgated thereunder be declared unconstitutional; that the United States be restrained from collecting any penalties; that the United States be enjoined from interference with plaintiff's production or marketing operations; that the court decree that the United States has no lien upon the 570 bushels of wheat stored on his farm; and that his title to the wheat be quieted as against the United States.

Because petitioner was seeking to enjoin the operation of a federal statute, a three-judge court was convened pursuant to the provisions of 28 U. S. C. 2282 (Pet. App. 6). The United States filed a motion to dismiss, urging (1) that petitioner's complaint

failed to state a cause of action on which relief could be granted; (2) that the district court lacked jurisdiction in that the United States had not consented to be sued; and (3) the Secretary of Agriculture was an indispensable party. The district court granted the motion to dismiss upon the ground that the United States has not consented to be sued. It found that the action was instituted not for the purpose of quieting title, but to restrain the Government from collecting the statutory penalties. (Pet. App. 8) The three-judge court was discharged because it was not necessary to rule on the constitutional question presented. (Pet. App. 6)

The Court of Appeals for the Sixth Circuit affirmed upon the same grounds stated in the district court's opinion. (Pet. App. 9)

ARGUMENT

Even if the United States had consented to be sued in this action, it is clear that petitioner has stated no cause of action since the objections which he raises to the constitutionality of the Agricultural Adjustment Act of 1938 were rejected by this Court in *Wickard* v. *Filburn,* 317 U. S. 111.

It is equally plain that there has been no consent to the suit. Petitioner admits that he has exceeded his assigned production quota. Apparently recognizing respondent's sovereign immunity (cf. *Stout* v. *United States,* 229 F. 2d 918 (C. A. 2), certiorari denied, 351 U. S. 982), he attempts to bring his action within the

scope of the statute (28 U. S. C. 2410) waiving that immunity in respect of actions to quiet title to personal property upon which the United States has a lien. Thus, he claims that the lien for the penalty he owes is a cloud upon his title to his wheat crop. In making this contention, however, petitioner has disregarded the provisions of the Agricultural Adjustment Act which set forth an *exclusive* procedure (*supra*, p. 3) for challenging the validity of production and marketing quotas and expressly deny to any court jurisdiction to review the validity of these quotas in any other proceeding. 7 U. S. C. 1367. *United States* v. *Lillard*, 143 F. Supp. 113 (W. D. Mo.); *United States* v. *Bonderer*, 139 F. Supp. 391 (W. D. Mo.); *United States* v. *Stangland*, 137 F. Supp. 539 (N. D. Ind.); cf. *Lockerty* v. *Phillips*, 319 U. S. 182; *Yakus* v. *United States*, 321 U. S. 414. The lien which attaches to petitioner's wheat arises from a penalty which in turn depends upon the validity of the production and marketing quota which was assigned to him by his local county committee. Petitioner did not challenge this quota by the proceeding for review set forth in the Agricultural Adjustment Act of 1938, 7 U. S. C. 1363. Since this statutory remedy is exclusive and operates "[n]otwithstanding any other provision of law," 7 U. S. C. 1367, petitioner can obtain no support whatever from the provisions of 28 U. S. C. 2410, relating to actions to quiet title.

CONCLUSION

The decision below is clearly correct. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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